
LEGAL UPDATE

Legal Services Division



Ground Floor, State Capitol Building

Des Moines, Iowa 50319

515.281.3566

IOWA SUPREME COURT DECISION — DEFERRED COMPENSATION PLANS AND EXEMPTIONS FROM EXECUTION IN GARNISHMENT PROCEEDINGS

Purpose. *Legal updates are prepared by the nonpartisan Legal Services Division of the Legislative Services Agency. A legal update is intended to provide legislators, legislative staff, and other persons interested in legislative matters with summaries of recent meetings, court decisions, Attorney General Opinions, regulatory actions, federal actions, and other occurrences of a legal nature that may be pertinent to the General Assembly's consideration of a topic. Although an update may identify issues for consideration by the General Assembly, it should not be interpreted as advocating any particular course of action.*

Commerce Bank v. McGowen

Filed March 12, 2021

No. 19-1994

www.iowacourts.gov/courtcases/11805/embed/SupremeCourtOpinion

Facts and Procedural Background. Commerce Bank obtained a \$1.5 million judgment against Robert McGowen in Minnesota. After domesticating that judgment in Iowa, Commerce Bank caused to be issued a writ of general execution that directed the sheriff to levy on McGowen, Hurst, Clark & Smith, P.C. (MHCS), Mr. McGowen's employer. Mr. McGowen moved to exempt from execution all payments MHCS made to him under its deferred compensation plan (plan). Mr. McGowen claimed these payments were exempt from execution pursuant to Iowa Code section 627.6(8)(e).

The plan provides for multiple types of deferred compensation, including Type 1 compensation and Type 2A compensation. Type 1 compensation, which is available to all of MHCS's shareholders, is "intended to approximate the realizable value of [MHCS's] receivables and unbilled work in process." Type 2A compensation, which is limited to Mr. McGowen and other identified shareholders, is intended to approximate the shareholder's "pro-rata portion of the intangible value of [MHCS's] professional practice." Type 2A compensation is "calculated at 80% of the average of [MHCS's] prior three fiscal years' collected fees." Deferred compensation under the plan is available to MHCS's shareholder employees upon the occurrence of any of the following events: separation from service, attainment of age 67, disability, death, or the sale of substantially all of MHCS's assets. Upon reaching age 67, Mr. McGowen qualified under the plan for both Type 1 and Type 2A deferred compensation.

The district court held that the deferred compensation payments that MHCS made to Mr. McGowen under the plan were not exempt from execution pursuant to Iowa Code section 627.6(8)(e). Mr. McGowen appealed to the Iowa Supreme Court (Court).

Issue. Whether the deferred compensation payments that MHCS made to Mr. McGowen under the plan were exempt from execution pursuant to Iowa Code section 627.6(8)(e).

Holding. The Court reversed and remanded the decision of the district court. The Court held that the deferred compensation payments that MHCS made to Mr. McGowen under the plan were exempt from execution pursuant to Iowa Code section 627.6(8)(e).

Analysis. Iowa Code section 627.6(8)(e) provides, in relevant part:

A debtor who is a resident of this state may hold exempt from execution the following property:

...

8. The debtor's rights in:

...

e. A payment or a portion of a payment under a pension, annuity, or similar plan or contract on account of illness, disability, death, age, or length of service

The Court began its opinion by describing its general approach to exemption statutes such as Iowa Code section 627.6(8)(e). The Court cited to a previous Court case in which stated that “[i]t is well settled that exemption statutes must have a liberal construction.” *Kelly v. Degelau*, 58 N.W.2d 374, 376 (Iowa 1953). The Court has held that exemption statutes such as Iowa Code section 627.6(8)(e) must be liberally construed to “carry [] out the beneficent [sic] object of the legislation.” *Frudden Lumber Co. v. Clifton*, 183 N.W.2d 201, 203 (Iowa 1971) (citation omitted).

The Court stated that, pursuant to Iowa Code section 4.1(38), “[i]n determining the fair and ordinary meaning of the statutory language at issue, we consider the language’s relationship to other provisions of the same statute and other provisions of related statutes.” The Court explained that when determining the fair and ordinary meaning of an exemption statute, it will consider certain federal authorities that interpret similar provisions of the United States Bankruptcy Code. Because Iowa Code section 627.6(8)(e) is modeled on a “nearly identical” federal exemption found in 11 U.S.C. section 522(d)(10)(E), the Court, relying on *City of Davenport v. Pub. Emp. Rels. Bd.*, 264 N.W.2d 307, 313 (Iowa 1978) (en banc), a previous Court case, stated it would “presume our legislature intended what Congress intended.”

The Court then examined the plain language in Iowa Code section 627.6(8)(e), which requires a debtor to analyze whether two elements have been established to claim the exemption: (1) whether the payment claimed to be exempt was made under a pension, annuity, or similar plan or contract and, if so, (2) whether the pension, annuity, or similar plan or contract is payable or is being paid on account of illness, disability, death, age, or length of service. After analyzing certain federal authorities, the Court stated “[p]ayments under a plan or contract are similar to payments under a pension or annuity when the payments are periodic and deferred to such time when the payments serve as wage substitutes because the recipient is likely to have reduced wage income.” Accordingly, with regard to the first element required to claim the exemption, the Court found that the deferred compensation payments MHCS made under the plan were “similar to payments made under a pension or annuity because the payments are deferred payments intended to serve as wage substitutes at a time when it is expected the recipient would have decreased wage income.” With regard to the second element required to claim the exemption, the Court found that the deferred compensation payments MHCS made under the plan were “on account of illness, disability, death, age, or length of service . . .” as the payments in this case were made because Mr. McGowen reached the age of 67.

The Court addressed additional arguments by Commerce Bank that Iowa Code section 627.6(8)(e) does not apply in this case. The Court stated it was of no consequence in analyzing the first element required to claim the exemption that Mr. McGowen was not retired. According to the Court, “the relevant inquiry for determining whether a payment is similar to an annuity or pension payment is the nature of the payment and not the particular circumstances of the individual.” See *Rousey v. Jacoway*, 544 U.S. 320, 331 (2005). The Court also stated it was of no consequence in analyzing the second element required to claim the exemption that the payments under the plan could have been triggered by other qualifying events because, in this case, the payments were triggered by Mr. McGowen reaching 67 years of age.

LSA Staff Contact: James Arnett, 515.281.3745 or J.D.Arnett@legis.iowa.gov